

**DURHAM, NORTH CAROLINA  
MONDAY, MARCH 18, 2002  
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Excused Absence: Council Member Edwards.

Also present: City Manager Marcia L. Conner, City Attorney Henry Blinder, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with the Pledge of Allegiance.

Mayor Bell read a proclamation designating April 15-28, 2002 as Litter Sweep.

Mayor Bell announced he spoke to 3<sup>rd</sup> graders at Holt Middle School and was asked if the City had an Adopt-A-Street plan. He asked the administration to take a look at this issue.

In addition, the Mayor commented on the time limit for Council Members speaking to items on the agenda, requested the City Manager to schedule a Special City Council Meeting as soon as possible concerning the land use plan/maps that have been adopted and noted he received a letter from the Governor indicating that he is delaying the March 15 revenue to local governments until the review of the April revenue figures. Finally, he announced a Joint Meeting with the City Council, County Commissioners, NCDOT and TAC is scheduled for Monday, April 29, 2002, 7 p.m. at the Hillandale Staff Development Center to discuss the Northern Durham Loop.

Council Member Clement requested the City Manager/City Attorney to provide information on how the sales tax and property tax revenue is allocated between the City and County of Durham with respect to Southpoint Mall.

Mayor Bell asked the City Manager, City Attorney and City Clerk for priority items. City Manager Conner made comments regarding handouts and follow up information for the following items: 10 [Sales & Solicitation Ordinance], 11 [Pendleton Apartments], 13 [W. Chapel Hill Street Commercial Extension/DCLT], 14 [Eagle Commons Retail Center], 48 [Economic Development Initiative-Special Projects], 25 [Loan Review Committee] and 35 [Rezoning – Westfield Homes].

There were no priority items from the City Attorney.

City Clerk D. Ann Gray reminded Council that a valid protest petition was filed against GBA Item 47 [ZONING CASE AMENDMENT P01-72].

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Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. Items 3 [Hope Valley Farms], 9 [Voluntary Annexation Petitions], 18 [Crosland Development Company] and 19 [Crossman Communities] were pulled. Mayor Bell noted he would be abstaining on Items 13 [W. Chapel Hill Street Commercial Extension/DCLT] and 14 [Eagle Commons Retail Center].

Relative to Consent Item #25 [Establishment of Loan Review Committee], Council Member Stith requested staff to provide Council with quarterly reports.

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to approve the Consent Agenda as amended was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**[CONSENT AGENDA]**

**SUBJECT: HOUSING APPEALS BOARD – RECEIPT AND ACCEPTANCE OF AN APPLICATION**

*The Clerk will re-advertise to fill one (1) vacancy for an Alternate Member to represent the category of Law for the Housing Appeals Board. The term will expire June 30, 2004. (Due to the resignation of Anthony D. Nicholson)*

**SUBJECT: DURHAM AREA TRANSIT AUTHORITY – RECEIPT AND ACCEPTANCE OF APPLICATIONS**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to receive and accept applications for citizens to fill two (2) Regular Member vacancies to represent the categories of Bus Rider and At-Large. The terms will expire March 1, 2005 was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: RIDGEFIELD PHASES 5A & 5B PRELIMINARY PLAT**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to approve a Preliminary Plat for Ridgefield Subdivision, Phases 5A and 5B was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

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**SUBJECT: ORDERING IMPROVEMENTS – ENABLING ACT AUTHORITY**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to adopt resolutions setting public hearings for April 1, 2002 for the following improvements was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**Curb, gutter and paving and water main on Chalk Level Road** – From east P/L of TM# 298-1-5 TO SHAFTSBURY STREET

**SUBJECT: ORDERING PETITIONED IMPROVEMENTS**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to accept a Certificate of Sufficiency from the Manager of Engineering for the following petition; and

To adopt a resolution setting a public hearing on April 1, 2002 to consider ordering the following improvements was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**Curb, Gutter and Paving, Water Main and Water and Sewer Laterals on Beebe Drive** - From Barbee Road to West Property Line of Tax Map 517-1-12A.

**SUBJECT: SETTING PUBLIC HEARINGS FOR THE CONFIRMATION OF ASSESSMENT ROLLS**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to adopt resolutions setting public hearings for April 1, 2002 for the following assessment rolls was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**CURB, GUTTER AND PAVING ON PEARSON DRIVE** from Bay Point Drive to Fayetteville Road; **BAY POINT DRIVE** from Pearson Drive to Overby Drive and **OVERBY DRIVE** from Bay Point Drive to Mimosa Drive.

**WATER AND SEWER LATERALS ON PEARSON DRIVE** from Bay Point Drive to Fayetteville Road; **BAY POINT DRIVE** from Pearson Drive to Overby Drive and **OVERBY DRIVE** from Bay Point Drive to Mimosa Drive.

**SUBJECT: STOP SIGN - SAMOA COURT**

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To authorize the installation of a stop sign at Samoa Court at Duluth Street, southwest corner; and

To adopt an ordinance authorizing the installation of a stop sign on Samoa Court at Duluth Street, southwest corner was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**Ordinance #12522**

**SUBJECT: FISCAL YEAR 2001-02 INVESTMENT PLAN**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to authorize and to allocate total funding in the amount of \$14,920,000 for the department's proposed FY 2001-02 Investment Plan according to the following activity categories: Homeownership \$6,757,000; Rental \$2,173,000; Special Populations \$2,100,000; and Housing Programs \$3,890,000; and

To authorize the City Manager to make secondary mortgage loans up to \$100,000 per occurrence through the department's homebuyer purchase programs, with total loans made not to exceed the amount provided in the FY 2001-02 Investment Plan was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: WEST CHAPEL HILL STREET COMMERCIAL RENOVATION  
EXTENSION OF EDI-SPECIAL PROJECTS SUB-RECIPIENT  
AGREEMENT WITH DCLT - CITY OF DURHAM AND DURHAM  
COMMUNITY LAND TRUSTEES, INC. - 1208 WEST CHAPEL  
HILL STREET**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to authorize the City Manager to execute the amended EDI-SP sub-recipient agreement between the City of Durham and Durham Community Land Trustees, Inc., extending the contract from June 30, 2001 to June 30, 2002, for the completion of renovations at 1208 West Chapel Hill Street was approved at 7:28 p.m. by the following vote: Ayes: Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Abstention: Mayor Bell. Excused Absence: Council Member Edwards.

**SUBJECT: EAGLE COMMONS RETAIL CENTER ON FAYETTEVILLE  
STREET COMMERCIAL REDEVELOPMENT - EXTENSION OF  
EDI-SPECIAL PROJECTS SUB-RECIPIENT AGREEMENT WITH**

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**UDI COMMUNITY DEVELOPMENT CORPORATION - 3022  
FAYETTEVILLE STREET – CITY OF DURHAM**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to authorize the City Manager to execute the amended EDI-SP sub-recipient agreement between the City of Durham and UDI Community Development Corporation, extending the contract from December 31, 2001 to June 30, 2002, for the completion of construction to Eagle Commons Retail Center located at 3022 Fayetteville Street was approved at 7:28 p.m. by the following vote: Ayes: Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Abstention: Mayor Bell. Excused Absence: Council Member Edwards.

**SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF DURHAM AND THE BUREAU OF ALCOHOL TOBACCO AND FIREARMS VIOLENT CRIMES TASK FORCE AND PROPOSED GRANT PROJECT ORDINANCE - ALCOHOL TOBACCO AND FIREARMS VIOLENT CRIMES TASK FORCE INITIATIVE.**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to allow the City Manager to execute the Memorandum of Understanding between the City of Durham and the Bureau of Alcohol Tobacco and Firearms Violent Crimes Task Force; and

To adopt the Proposed Grant Project Ordinance for the City of Durham and the Alcohol Tobacco and Firearms Violent Crimes Task Force Initiative was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**Ordinance # 12523**

**SUBJECT: FOURTH QUARTERLY REPORT 2001 – POLICE DEPARTMENT**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to accept the report as the Police Department's Fourth Quarter 2001 Report was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: EXTENSION OF MOWING AND LITTER REMOVAL CONTRACT NO. M99.1 – DIXIE LAWN SERVICE, INC.**

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**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to authorize the City Manager to extend Contract M99.1 for mowing and litter removal for one additional year, through December 31, 2002, for \$472,336.81; and

To authorize the City Manager to modify the contract provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by City Council was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: SUBMISSION OF TRANSIT GRANT APPLICATION - FEDERAL TRANSIT ADMINISTRATION - CITY OF DURHAM AND NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (NCDOT)**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to adopt a resolution approving a Federal Transit Administration Program of Projects for the City of Durham, North Carolina; and

To adopt a resolution authorizing the filing of a grant application and execution of a grant agreement for Section 5307 funding with the Federal Transit Administration; and

To adopt a City of Durham and North Carolina Department of Transportation Section 5307 planning grant resolution was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**Resolution # 8844 – 8845 - 8846**

**SUBJECT: ACQUISITION OF PROPERTIES FOR THE FAYETTEVILLE ROAD WIDENING PROJECT - RALPH W. ELLIS AND WIFE, JOYCE M. - DENNIS W. MASSEY AND WIFE, DONNA G. - VALLIE C. MASSEY - ELWOOD C. MASSEY AND WIFE, JOANNE M.**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to approve the acquisition of approximately 6,243 S.F. of fee simple right of way and a construction easement containing approximately 4,592 S.F., Tax Map 522-01-001A, property of Ralph W. Ellis and wife, Joyce M., for \$62,430; and

To approve the acquisition of approximately 8,150 S.F. of fee simple right of way and a construction easement containing approximately 2,647 S.F., Tax Map 522-01-004A, property of Dennis W. Massey and wife, Donna G., for \$107,970; and

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To approve the acquisition of approximately 8,732 S.F. of fee simple right of way and a construction easement containing approximately 6,334 S. F., Tax Map 522-01-004, property of Vallie C. Massey, for \$150,660; and

To approve the acquisition of approximately 4,910 S.F. of fee simple right of way and a construction easement containing approximately 5,759 S. F., Tax Map 522-01-004C, property of Elwood C. Massey and wife, Joanne M., for \$106,690 was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: NEUSE RIVER PUBLIC EDUCATION REQUIREMENT - CLEAN WATER EDUCATION PARTNERSHIP**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to authorize participation with ten other jurisdictions in the Clean Water Education Partnership in order to fulfill public education requirements of the City Neuse River Stormwater Program was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: RALEIGH-DURHAM INTERNATIONAL AIRPORT FEDERAL AVIATION ADMINISTRATION GRANT OFFER - TAXIWAY "J" AND INTERNATIONAL DRIVE BRIDGE, RDU 080419 AND FAA AIP GRANT NUMBERS 3-37-0056-25**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to authorize the acceptance of a grant offer in the amount of \$7,900,000 for Taxiway "J" and International Drive Bridge, RDU 080419 and FAA AIP Grant Numbers 3-37-0056-25; and

To authorize the City Manager to execute the Grant Agreement and to authorize the City Attorney to give assurances with respect thereto was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: DURHAM OPEN SPACE AND TRAILS COMMISSION ANNUAL REPORT**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to receive a presentation on the Durham Open Space and Trails (DOST) Commission Annual Report was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell,

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Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: ESTABLISHMENT OF LOAN REVIEW COMMITTEE**

Council Member Stith requested staff to provide quarterly reports to Council.

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to receive a report on the seven member loan committee; and

To adopt a Resolution by the City Council of the City of Durham to Establish a Loan Review Committee was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**Resolution #8849**

**SUBJECT: GENERAL EDUCATIONAL DEVELOPMENT (GED) FOR THE CITY OF DURHAM AND THE NECD REINVESTMENT**

To receive an update on the General Educational Development for the City of Durham and the NECD Reinvestment.

*At the request of the citizen, this item was removed from the agenda.*

**SUBJECT: RALPH M. MCKINNEY**

To receive comments from Ralph M. McKinney.

*At the request of the citizen, this item was removed from the agenda.*

**SUBJECT: MARY BASKIN**

To receive comments from Mary Baskin.

*At the request of the citizen, this item was removed from the agenda.*

**SUBJECT: MINUTES FOR APPROVAL – CITY CLERK’S OFFICE**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to approve the official minutes of the January 22, 2002, February 4, 2002, and February



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18, 2002 regular City Council Meetings was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: ADDITION TO THE SURPLUS CITY PROPERTY LISTING**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to declare the properties shown on the list surplus; and

To authorize the sale of the properties under the Sealed Bid Method, with a report to the City Council before finalizing the sale was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: CONTRACT EXTENSION - DURHAM BULLS ATHLETIC PARK  
SEASONAL CLEANING - SARVIS ENTERPRISES**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to authorize the City Manager to enter into an extension of the contract with Sarvis Enterprises for seasonal cleaning at the Durham Bulls Athletic Park from April 5, 2002 to September 15, 2002 in the total amount of \$283,764; and

To authorize the City Manager to make changes to the contract such that the cost to the City does not increase and the obligations of the contractor are not lessened was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: ECONOMIC DEVELOPMENT INITIATIVE – SPECIAL  
PROJECTS**

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to amend Section 1 of Ordinance No. 1161 “Economic Development Initiative – Special Projects” to read “The project authorized includes physical improvements to designated areas from July 1, 1999 until all funds have been expended” was approved at 7:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**[ITEM PULLED FROM CONSENT AGENDA]**

**SUBJECT: THE SHOPPES AT HOPE VALLEY FARMS**

**March 18, 2002**

To approve a site plan for "The Shoppes at Hope Valley Farms" submitted by The John R. McAdams Company, Inc. on behalf of Kimco Hope Valley Limited Partnership, consisting of a 119,007 square foot Shopping Center on a 21.25 acre tract, zoned SC (Shopping Center), located at the northeast corner of MLK Parkway and Roxboro Street, west of Cook Road. (Tax Map 508-001-001), (PIN #0729-01-07-8703) (City Atlas Page 37, Grids B-2 and B-3).

Mayor Bell asked staff is there sufficient buffer along the MLK Parkway. Also, he raised concern about the trees and grading issues.

Steve Medlin, of the City/County Planning Department, noted the developer has set aside a permanent landscape easement along the MLK Parkway consistent with the approved landscaping plan that Council adopted recently and the developer would be installing trees and shrubs consistent with the approved planting list. Mr. Medlin stated the developer would have to do fine grading of the site; however, the rough grading has already been completed.

Mayor Bell urged staff to take precautions to preserve much of the scenic view along the Parkway and to monitor the developer in terms of providing that level of stream.

Steve Medlin, of the City/County Planning Department, noted any subsequent site plans coming through on any of the out parcels would have to be approved by Council.

**MOTION** by Council Member Stith seconded by Mayor Pro Tempore Cheek to approve a site plan for "The Shoppes at Hope Valley Farms" submitted by The John R. McAdams Company, Inc. on behalf of Kimco Hope Valley Limited Partnership, consisting of a 119,007 square foot Shopping Center on a 21.25 acre tract, zoned SC (Shopping Center), located at the northeast corner of MLK Parkway and Roxboro Street, west of Cook Road. (Tax Map 508-001-001), (PIN #0729-01-07-8703) (City Atlas Page 37, Grids B-2 and B-3) was approved at 7:32 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

At this time during the meeting, Mayor Pro Tempore Cheek requested that GBA [PUBLIC HEARING] Item #47 [Zoning Case: P01-72] be discussed due to a request for removal.

**SUBJECT: ZONING MATTER CASE: P01-72 - R. L. HORVATH ASSOCIATES, INC. - 5.719 ACRES AT 1510 LAWSON STREET, THE SOUTHEAST CORNER AT THE INTERSECTION OF BACON STREET AND LAWSON STREET**

Zoning Amendment Case: P01-72

Applicant: R. L. Horvath Associates, Inc.

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Location: 5.719 acres at 1510 Lawson Street, the southeast corner at the intersection of Bacon Street and Lawson Street, PIN 0830-06-49-3397 (Tax Map 199, Block 4, Lot 1A)

Request: Rezoning from OI-2 (D) (General Office and Institutional District) to I-2 (Light Industrial District)

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of OI-2 (D) and placing same in and establishing same as I-2.

Zoning Committee Recommendation and Vote: Denial – (6-0)

Planning Department Recommendation: Approval

Note: Valid protest petition filed against this rezoning.

Dick Hails, Assistant City Planning Director, informed Council that staff has received a notification from the applicant requesting withdrawal of this Zoning Case P01-72.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.

### **Proponent**

Ron Horvath, representing the applicant, informed Council the applicant has not been able to get with the neighbors to reach a compromise; therefore, he is requesting that this case be withdrawn at this time.

Council Member Clement raised a concern about the public hearing being closed.

City Clerk D. Ann Gray noted the public hearing was continued from the last meeting.

### **Opponents**

James Brown, of 945 Bacon Street, spoke in opposition to this rezoning noting that he would like to keep the zoning as it is today and would like for the area to be developed as an educational resource for children.

Rev. Verly A. Powell, of New Aggressive Church of Deliverance, briefed Council noting that the members of the church were responsible for getting the site rezoned a year ago. She made comments about not being able to close out as agreed upon in the contract because of the things involved for the land and building to bring closure, and urged Council to carefully look at this matter.

Harold Chestnut, representing PAC 4, urged Council to vote against this rezoning. He raised concern about the developer using the building for recycling and storing chemicals near the schools in the area.

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Denise Hester, of 3526 Abercromby Drive, spoke in opposition to this rezoning requesting that the rezoning remain the same and expressed concern about some of the proposed uses not being in the best interest of the neighborhood. She requested when the applicant comes back that there be a development plan submitted with the proposal.

Lavonia Allison, representing DCABP, spoke in opposition to the rezoning being industrial because of the R. N. Harris Magnet School. Also, she raised a concern about recommendations made by the Planning Staff for approval and the Zoning Committee for denial.

### **Rebuttal**

Ron Horvath, representing the applicant, stated the facility is not vacant and commented on zoning. Also, he noted their intent is to work with the neighbors and if they bring this matter back there will be a development plan controlling what is allowed to occur in the building.

Mayor Bell declared the public hearing closed.

Mayor Bell asked the City Attorney what would be the effect of the land use decision vs. voting this item down.

City Attorney Blinder noted if this item is voted down, there is a 12-month waiting period.

Dick Hails, Assistant Planning Director, noted there is a 6-month waiting period if the rezoning is withdrawn.

Council Member Cole-McFadden expressed concern about continuing the request to allow the applicant to meet with the neighbors.

A motion was made by Mayor Pro Tempore Cheek seconded by Council Member Best to allow the applicant to withdraw the rezoning request.

Mayor Bell spoke in opposition to this rezoning due to the concerns from the community not being supportive of this request.

Council Member Stith noted for clarification that this item could come back in 12 months if Council votes against this rezoning request.

Council Member Best spoke in support of the applicant's withdrawal request.

**SUBSTITUTE MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of OI-2 (D) and placing same in and establishing same as I-2 **FAILED** at 7:58 p.m. by the

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following vote: Ayes: Mayor Pro Tempore Cheek and Council Member Best. Noes: Mayor Bell and Council Members Clement, Cole-McFadden and Stith. Excused Absence: Council Member Edwards.

**[ITEMS PULLED FROM CONSENT AGENDA]**

**SUBJECT: VOLUNTARY ANNEXATION PETITIONS - SUBMITTED PRIOR TO JANUARY 1, 2002 - SOUTHPOINT VILLAGE - COOKSBURY DRIVE - HEBRON ROAD TEMPLE BAPTIST CHURCH - GLENNSTONE SUBDIVISION - CAMBERLY SUBDIVISION**

To receive a report from the administration on Voluntary Annexation Petitions; and

To accept the City Clerk's certification of 100% ownership as required by N.C. General Statutes 160A-31 and 160A-58; and

To adopt resolutions establishing public hearings for April 1, 2002 on the following submitted Voluntary Annexation Petitions:

SouthPoint Village	Cooksbury Drive
Hebron Road	Temple Baptist Church
Glennstone Subdivision	Camberly Subdivision

Mayor Bell asked staff does the present zoning of these properties allow the proposed development description that has been described.

Frank Duke, Planning Director, noted under the current zoning, SouthPoint Village as proposed would not be able to go forward under the required rezoning.

Relative to SouthPoint, Mayor Bell asked staff if the analysis is based on the development for a development of 289-unit apartment complex and a 30,000 square feet of commercial office space.

Vincent Taylor, Budget Analyst, replied that's correct.

Mayor Bell asked staff does the existing zone permit that type of development.

Frank Duke, Planning Director, stated no.

Mayor Bell raised a concern about these properties noting an analysis should be based on existing zoning and if it is annexed what is the value.

In the future, City Manager Conner noted that staff could show both the net results of keeping the zoning consistent with the current zoning and show the analysis if the zoning is approved in the future.

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Mayor Bell asked staff to indicate those projects that the existing zoning would be the same if the property was annexed.

Frank Duke, Planning Director, noted the SouthPoint Village and Cooksbury Drive have pending rezonings. For the other projects, the annexation analysis was consistent with their current zoning.

**MOTION** Council Member Clement seconded by Council Member Cole-McFadden to receive a report from the administration on Voluntary Annexation Petitions; and

To accept the City Clerk's certification of 100% ownership as required by N.C. General Statutes 160A-31 and 160A-58; and

To adopt the resolutions establishing public hearings for April 1, 2002 on the following submitted Voluntary Annexation Petitions was approved at 8:07 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

Hebron Road  
Glennstone Subdivision

Temple Baptist Church  
Camberly Subdivision

**Resolution# 8840 – 8841 – 8842 – 8843**

**MOTION** by Council Member Clement seconded by Council Member Stith to refer the SouthPoint Village and Cooksbury Drive voluntary annexation petitions to the administration to allow them to provide information on the net results if the zoning is kept consistent with the current zoning and show the analysis if the zoning is approved in the future was approved at 8:08 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: WATER AND SEWER EXTENSION AGREEMENT - CROSLAND DEVELOPMENT COMPANY - FAYETTEVILLE ROAD**

To authorize the City Manager to execute a water and sewer extension agreement with Crosland Development Company to serve a neighborhood commercial and residential development, totaling 27.34 acres, on the east side of Fayetteville Road, north of James Ross Road.

Lee Murphy, of the Public Works Department, made a presentation on this item.

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Mayor Bell raised a concern about the following statement in staff's memo dated February 20: "The developer shall submit a voluntary petition for annexation as part of the extension."

Lee Murphy, of the Public Works Department, noted it would be up to Council whether or not to accept or deny annexation.

Mayor Bell asked staff if Council denied annexation, what would be the results.

Lee Murphy, of the Public Works Department, noted the property would not be in the City limits but still would be allowed to have water and sewer extended.

**MOTION** by Council Member Clement seconded by Mayor Pro Tempore Cheek to authorize the City Manager to execute a water and sewer extension agreement with Crosland Development Company to serve a neighborhood commercial and residential development, totaling 27.34 acres, on the east side of Fayetteville Road, north of James Ross Road was approved at 8:09 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: WATER AND SEWER EXTENSION AGREEMENT- CROSSMAN COMMUNITIES OF N.C., INC. - SUMMER MEADOWS SUBDIVISION**

**MOTION** by Council Member Clement seconded by Mayor Pro Tempore Cheek to authorize the City Manager to execute a water and sewer extension agreement with Crossman Communities of N.C., Inc. to serve Summer Meadows Subdivision, an 86.1 acre, 286 unit residential subdivision located north of Hebron Road, between Denfield and West Avenue was approved at 8:10 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**[GENERAL BUSINESS AGENDA]**

**SUBJECT: PROPOSED SALES AND SOLICITATION ORDINANCE**

To adopt the proposed Sales and Solicitation Ordinance and the Resolution Establishing Fees Under Chapter 17 of the City Code.

Susan Pervis, representing the Herald-Sun Street Sales, noted it would be sad to know that their jobs were taken away from us because they depend on it for food and shelter.

James Jones, of 2932 Cheek Road, spoke in support of street sales for newspapers.

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Toby Barfield, representing the Herald-Sun, made comments about Rev. Ernie Mills' letter of support, noted the Burlington Ordinance allows for the Constitutionally protected activities including the selling of newspapers by a system of permitting and spoke in support of street vendors noting their livelihood would be destroyed if they are removed from their current location.

Attorney George Miller, Jr., representing the Herald-Sun, noted the City's draft ordinance pertaining to Division 2. Restriction in Street Rights-of-Way takes away what the permits purports to give the City. Also, he urged Council to send the ordinance back to staff and would be willing to work with them in designating a proposal.

Bill Kalkhof, of Downtown Durham, Inc., stated DDI is in favor of its approval noting it places needed guidelines on the design and location of outdoor vendor carts, stands, and restaurant seating. He urged the City Council to adopt those portions of the proposed ordinance that are beneficial to the revitalization of downtown.

Jackie Wagstaff, a resident of Durham, urged Council to support the proposed ordinance. Also, she noted the Herald-Sun should examine what they can do to make sure their employees maintain employment.

Council Member Clement requested that proposed ordinance be referred back to the administration utilizing the Burlington Ordinance as a model.

Council Member Cole-McFadden noted that she cannot support the present ordinance because of street vendors.

Mayor Pro Tempore Cheek raised a concern noting this item has been studied for two years and does not want vendors to be put out of business, but Council needs to look at what is for the greater good. Also, he spoke in support of ordinance but would hope that it applies to all roadways under Section 17-55 rather than selected roadways.

Council Member Stith noted that he cannot support the proposed ordinance as it relates to street vendors and First Amendment rights.

Council Member Best spoke in support of deferring this item and requested staff to examine the following issues: begging, the Burlington Ordinance, restaurants with sidewalk seating and how high school groups will be effected.

Richard Weintraub, Assistant City Attorney, briefed Council on the changes to the draft of the proposed ordinance highlighting 17-64.1(a) Fixed Location Vending permit limited to First Amendment Protected sales and 17.58. Prohibition on use of stands, carts, etc. to sell on sidewalks, necessity for permit. Also, he gave an overview of Burlington Ordinance highlighting the permitting process, First Amendment rights and safety issues. He informed Council that the Burlington Ordinance could mean legal trouble for the City of Durham.



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Mayor Bell asked if the proposed ordinance would allow persons in the roadway to solicit or sell something.

Richard Weintraub, Assistant City Attorney, noted the proposed ordinance in the agenda would prohibit those types of activities and any transaction between a pedestrian and car in the travel lane of the roadway.

Mayor Bell asked Assistant City Attorney Weintraub can Council propose an ordinance which would permit one group to stand in the busy roadways to solicit and could not exclude others.

Richard Weintraub, Assistant City Attorney, made comments about the protected speech rights pertaining to groups.

A motion was made by Council Member Clement seconded by Council Member Best to refer the proposed sales and solicitation ordinance back to staff and to report back at the April 15, 2002 City Council Meeting with a proposed ordinance incorporating the Burlington Ordinance.

City Manager Conner asked for clarification on the proposed ordinance noting that staff should focus on issue of solicitation in the streets reflecting the Burlington Ordinance since Council is all right with the vendors in terms of restrictions of other areas.

Council Member Clement replied yes; however, he would like to protect those Herald-Sun sales people from losing their livelihood incorporating what the City of Burlington is proposing.

After discussion, City Attorney Blinder suggested that the entire ordinance come back to Council with staff amending the portion of the ordinance that addresses the sales and activities in the street right-of-way.

Council Member Best noted staff should look at the whole issue regarding permitting as it relates to guidelines in areas [downtown district/right-of-way]. Also, he noted the objective should be how do we improve our image by getting the panhandlers off the street and how can we through the permitting process have legal solicitation, sales and donations occur on right-of-ways.

**MOTION** by Council Member Clement seconded by Council Member Best to refer the proposed sales and solicitation ordinance back to the administration until the April 15, 2002 City Council Meeting [staff will review ordinance related to sales and activities in street right-of-ways and review the Burlington Ordinance] was approved at 8:58 p.m. by the following vote: Ayes: Mayor Bell and Council Members Best, Clement, Cole-McFadden and Stith. Noes: Mayor Pro Tempore Cheek. Excused Absence: Council Member Edwards.

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**SUBJECT: PENDLETON TOWNHOMES**

To receive a report on the review of the applicability of the Fair Share Housing Distribution Policy.

Charlene Montford, Housing & Community Development Director, gave an overview of this item. She commented on the Housing Impact Policy and letter for submission to N. C. Housing Finance Agency noting the City did not correctly apply its policy to the proposed development of Pendleton Apartments.

Council Member Cole-McFadden requested the Housing Impact Policy be in the form of an ordinance rather than a policy.

Attorney Ken Spaulding, representing Pete Hubicki, spoke in support of this project. He noted this is an IRS matter and not a HUD program for housing, Durham housing impact guidelines do not apply to these townhomes because they are ambiguous, incomplete and unclear, residencies are well within the market rate and raised a concern with information provided by staff on fair market rates. Also, Attorney Spaulding spoke in opposition to Mayor Bell sending another letter to NCHFA calling into question the official action of a previous City Council which would be detrimental to the City's bond reputation.

Linda Williamson, representing Wedgewood Neighborhood Group for Fair Shared Housing, noted residents stand in firm opposition to building Pendleton Apartments in their neighborhood and showed a video highlighting the condition of the neighborhood.

Victoria Peterson, of P. O. Box 101, expressed concern about public housing units being placed in African American communities.

Guy Rankin, representing East Durham, raised concern about packing and concentrating affordable housing in those traditional neighborhoods. Also, he made comments about the Housing Impact Policy and the HUD Consolidated Plan Policy [see handout distributed].

Linda Teston, representing neighbors, spoke in support of housing but raised traffic/street concerns in the neighborhood.

Dr. Anita Keith-Foust, of 323 W. Trinity Avenue, stated these neighbors have been overburdened with this type of housing.

Alan McSurely, representing Wedgewood, expressed a concern with the Housing Impact Policy and the distribution of fair-shared housing.

Council held discussion on the November 11<sup>th</sup> letter and market rate.

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Council Member Stith stated there should be a firm policy that Council is operating from and asked staff if there is an impact on the future projects: Hope VI and Fayetteville Street Housing.

Charlene Montford, Housing & Community Development Director, made comments on the eight proposals coming up for discussion at the April 1<sup>st</sup> City Council Meeting and noted the administration would be using the criteria to define market rents as fair market rents.

City Council Stith asked staff what would be the impact in sending a letter from the Mayor rescinding the City's support of the Pendleton Townhomes project.

City Attorney Henry Blinder noted it's a policy decision.

Mayor Pro Tempore Cheek asked staff what ability is there on the part of the City Council to stop the Pendleton project.

Frank Duke, Planning Director, noted the project is under review because of outstanding issues with site plan. He noted that staff was advised by the City Attorney that the City cannot use the Housing Impact Policy as the basis in that review but can only use the criteria outlined in the code.

Mayor Pro Tempore Cheek raised a concern with sending letter if it will not accomplish anything.

Council Member Cole-McFadden noted that a representative from the NCHFA advised the City to send a letter.

Council Member Best asked Attorney Spaulding to comment on Fair Market Rents and asked if the bonds have been issued.

Relative to Fair Market Rents, Attorney Kenneth Spaulding explained how HUD interprets fair market rents for the federal approach using the metropolitan statistical area. Also, Attorney Spaulding noted the bonds have been issued, sold and the closing took place December 13, 2001, bondholders have they tax exempt status and we have the tax credits. Also, he noted this was not a HUD financing but an IRS opportunity for exemption and tax credit, and the development plan was passed September 14, 1993.

Steve Medlin, of the City/County Planning Department, noted the development plan approved in 1993 did not have any required elements related to elevations.

**MOTION** Council Member Best seconded by Council Member Stith to extend the meeting beyond 10:00 p.m. was approved at 10:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

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Council Member Best raised concerns regarding the proposed letter due to the bonds.

Council Member Cole-McFadden spoke in support of sending the letter.

Mayor Bell outlined reasons why he supports sending the letter and requested staff to attach the City's Housing Impact policy and staff's memo dated March 15, 2002.

Council held discussion on eight projects coming forth.

For clarification, City Manager Conner informed Council that NCHFA has given the City until April 3 to respond to the eight properties and noted staff would be utilizing the current policy to evaluate those projects. Also, she noted that staff would report back in 60 to 90 days with recommendations to the policy.

Council Member Clement directed staff to come back with a re-draft of the Housing Impact Policy at the June 3, 2002 City Council Meeting.

**MOTION** by Council Member Clement seconded by Council Member Cole-McFadden to receive a report from the administration on its Housing Impact Policy and its application to the Pendleton Townhomes Project; and

To approve letter dated March 19, 2002 for submission to the North Carolina Housing Finance Agency [NCHFA]--staff to attach current information relative to city's Housing Impact policy along with staff memorandum dated March 15, 2002; and

To direct staff to review the current Housing Impact Policy and make recommendations to City Council for revisions to the policy at the June 3, 2002 City Council Meeting was approved at 10:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Clement, Cole-McFadden and Stith. Noes: Council Member Best. Excused Absence: Council Member Edwards.

**SUBJECT: DURHAM JAYCEES - DURHAM ALIVE! CONCERT SERIES**

To receive and approve a request from the Durham Jaycees to serve Beer at the Durham Alive! Concert Series.

Greg Jenkins, representing Durham Jaycees, spoke in support of this item commenting on their safety record.

Council Member Clement spoke in opposition to this request and noted that he would be voting against this item.

**MOTION** by Mayor Pro Tempore Cheek seconded by Council Member Best to receive and approve a request from the Durham Jaycees to serve Beer at the Durham Alive! Concert Series was approved at 10:28 p.m. by the following vote: Ayes: Mayor Bell,

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Mayor Pro Tempore Cheek and Council Members Best, Cole-McFadden and Stith.  
Noes: Council Member Clement. Excused Absence: Council Member Edwards.

**SUBJECT: CITY/COUNTY WATER AND SEWER BILLING AGREED UPON  
PROCEDURES – DIXON ODOM**

To authorize the City Manager to enter into a joint contract with the County of Durham with Dixon Odom for the amount of \$134,900 for accounting services to apply agreed upon procedures for the City/County Water and Sewer Projects; and

To authorize the City Manager to modify the contract provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by City Council.

Council Member Cole-McFadden noted that she is uncomfortable with this item because the City was not involved until decisions were made, not satisfied with Dixon Odom due to recruitment policy and workforce statistics being unacceptable. Also, she asked staff if Council needs to take action now due to shortage of funds and did they submit two different proposals.

Nav Gill, Finance Director, commented on discussions he had with Dixon Odom and the City's involvement from the beginning in February 2001.

For clarification on the additional proposal, Wendell Davis, Assistant County Manager, noted the initial proposals came in and it was not clear that some of the firms understood the scope of work. Subsequently, they received permission from the City and County legal staff to go back into negotiations with each of these firms. He stated it wasn't a second proposal.

It was indicated this item went before the Joint City/County Committee in late January.

Council Member Stith asked staff if the price changed from the initial proposal.

Wendell Davis, Assistant County Manager, replied not at all.

**MOTION** by Council Member Clement seconded by Council Member Best to authorize the City Manager to enter into a joint contract with the County of Durham with Dixon Odom for the amount of \$134,900 for accounting services to apply agreed upon procedures for the City/County Water and Sewer Projects; and

To authorize the City Manager to modify the contract provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by City Council was approved at 10:34 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members

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Best, Clement and Stith. Noes: Council Member Cole-McFadden. Excused Absence: Council Member Edwards.

**[GENERAL BUSINESS AGENDA - PUBLIC HEARINGS]**

**SUBJECT: CONFIRMATION OF ASSESSMENT ROLLS – CURB, GUTTER & PAVING ON CROSSWIND AVENUE**

To adopt resolutions confirming the assessment roll for CURB, GUTTER & PAVING ON CROSSWIND AVENUE - FROM CHAPEL HILL ROAD TO HICKMAN AVENUE.

Lee Murphy, of the Public Works Department, noted staff recommends confirming this assessment roll as printed on the agenda.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Council Member Stith seconded by Council Member Best to adopt resolutions confirming the assessment roll for CURB, GUTTER & PAVING ON CROSSWIND AVENUE - FROM CHAPEL HILL ROAD TO HICKMAN AVENUE was approved at 10:35 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: CONFIRMATION OF ASSESSMENT ROLLS - CURB, GUTTER & PAVING ON WINDCREST ROAD**

To adopt resolutions confirming the assessment roll for CURB, GUTTER & PAVING ON WINDCREST ROAD - FROM BARBEE ROAD TO WEST PROPERTY LINE OF TAX MAP 536-5-1.

Lee Murphy, of the Public Works Department, made comments on this item noting that staff received an objection to the assessment for Elizabeth Clanton. Mr. Murphy urged Council to approve assessment roll except for the Elizabeth Clayton property, continue the public hearing for assessment without further advertising and to refer assessment to the April 25, 2002 City Council Work Session for further consideration.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no further objections and/or allegations, the public hearing was declared closed.

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**MOTION** by Council Member Clement seconded by Council Member Stith to adopt resolutions confirming the assessment roll for CURB, GUTTER & PAVING ON WINDCREST ROAD - FROM BARBEE ROAD TO WEST PROPERTY LINE OF TAX MAP 536-5-1 and to refer the property of Elizabeth Clanton until April 25, 2002 City Council Work Session for further consideration and to continue public hearing without further advertising was approved at 10:36 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: CONFIRMATION OF ASSESSMENT ROLLS - WATER & SEWER LATERALS ON WINDCREST ROAD - FROM BARBEE ROAD**

To adopt resolutions confirming the assessment roll for WATER & SEWER LATERALS ON WINDCREST ROAD - FROM BARBEE ROAD TO WEST PROPERTY LINE OF TAX MAP 536-5-1.

Lee Murphy, of the Public Works Department, noted staff recommends confirming this assessment roll as printed on the agenda.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Mayor Pro Tempore Cheek seconded by Council Member Clement to adopt resolutions confirming the assessment roll for WATER & SEWER LATERALS ON WINDCREST ROAD - FROM BARBEE ROAD TO WEST PROPERTY LINE OF TAX MAP 536-5-1 was approved at 10:36 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: CONFIRMATION OF ASSESSMENT ROLLS - SEWER MAIN ON EDENTON LANE - FROM WOODBERRY ROAD TO NEW BERN PLACE**

To adopt resolutions confirming the assessment roll for SEWER MAIN ON EDENTON LANE - FROM WOODBERRY ROAD TO NEW BERN PLACE.

Lee Murphy, of Public Works Department, noted that John B. & Susan P. Modrak objected to their assessment. He noted staff's recommendation would be to confirm the assessment roll for this project except for the Modrak property, continue the public hearing without further advertising for assessment and to refer assessment to the April 25, 2002 City Council Work Session for further consideration.

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As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no further objections and/or allegations, the public hearing was declared closed.

**MOTION** by Council Member Clement seconded by Council Member Stith to adopt resolutions confirming the assessment roll for SEWER MAIN ON EDENTON LANE - FROM WOODBERRY ROAD TO NEW BERN PLACE and to refer property of John R. & Susan P. Modrak to the April 25, 2002 City Council Work Session for further consideration and to continue public hearing without further advertising was approved at 10:37 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: WATER MAIN ON U.S. 501 FROM TOM WILKINSON ROAD (FORMERLY MASSEY ROAD) TO SMITH DRIVE (MINI ASSESSMENT ROLL)**

Lee Murphy, of the Public Works Department, noted that staff's recommendation is to confirm assessment roll as printed on the agenda.

**a. Property of Michael C. Koutsis**

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Mayor Pro Tempore Cheek seconded by Council Member Clement to find that the property of Michael C. Koutsis, identified as Tax Map 843-6-45, U.S. 501, Lot 23, has not benefited from the water main improvement at this time and to relieve the assessment in the amount of \$6,097.50 with the provision that a future frontage charge will be due and payable at the prevailing rate should the property connect to the water service (in accordance with City Policy) was approved at 10:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**b. Property of Mt. Sylvan United Methodist Church**

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Mayor Pro Tempore Cheek seconded by Council Member Clement to find that the property of Mt. Sylvan United Methodist Church, identified as Tax Map 843-4-15, U.S. 501, cemetery, has not benefited from the water main improvement at this time



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and to relieve the assessment in the amount of \$8,400.00 with the provision that a future frontage charge will be due and payable at the prevailing rate should the property connect to the water service (in accordance with City Policy) was approved at 10:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**c. Property of Mildred C. Flintom and Elizabeth Flintom**

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Mayor Pro Tempore Cheek seconded by Council Member Clement to find that the property of Mildred C. Flintom and Elizabeth Flintom, identified as Tax Map 855-1-2, 5723 U.S. 501, 6.5 acre tract, has not benefited from the water main improvement at this time and to relieve the assessment in the amount of \$6,000.00 with the provision that a future frontage charge will be due and payable at the prevailing rate should the property connect to the water service (in accordance with City Policy) was approved at 10:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: ZONING ORDINANCE TEXT AMENDMENT EXTENDING THE PERIOD OF SITE PLAN VALIDITY (TC 128-02)**

To hold a public hearing for March 18, 2002 on a zoning ordinance text amendment initiated by the City of Durham to extend the period of site plan validity in cases where a development is under construction (TC 128-02).

Dick Hails, Assistant Planning Director, briefed Council on this item noting that staff supports additional two-year extension beyond site plan validity on multi-phased non-residential projects.

Council Member Cole-McFadden raised a concern that this item did not go through the process that allowed enough time for an adequate review; therefore, she would not be supporting this item.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.

Steven Matherly, representing People's Alliance, urged Council to not approve the proposed text amendment highlighting the following concerns: period during which a site plan should remain valid should be shortened and there should be public comment on this issue.

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Jim McDonald, of 3818 Somerset Drive, spoke in opposition to the text amendment noting this is a critical change being pushed through without an opportunity for public review.

Mayor Bell declared the public hearing closed.

Council held discussion on reason for change [request by Council Member Best] and phased development.

Mayor Pro Tempore Cheek raised a concern about changing the period to four years in a non-residential area.

Council Member Stith asked staff what process was followed.

Dick Hails, Assistant Planning Director, discussed the provision in the ordinance that allows City Council to expedite consideration of any change to the zoning ordinance.

Council Member Best outlined reason why he brought this item forward noting a constituent had a special interest in this text amendment. Also, he spoke in support of amendment noting it may take longer than two years due to unforeseen circumstances. He noted after the two-year validity period is up, it would be unfair to punish someone with regulations that have been passed after the fact and he noted this issue went through the proper channel and requested a deferral for one-cycle.

Mayor Bell asked Council Member Best what is going to be the impact on the constituent in the event the text amendment is not approved.

Council Member Best noted the developer would have to spend approximately \$60,000 on a storm water drain and noted the oversight by staff who had two opportunities to check the site plan validity and they did not do so.

Mayor Bell asked staff how many more projects would be impacted by the text amendment change and the grandfather clause.

Dick Hails, Assistant Planning Director, noted staff is not sure.

Mayor Bell noted that he could not support this item but would support a deferral to clarify issues.

**MOTION** by Council Member Best seconded by Council Member Clement to defer action on the proposed zoning ordinance text amendment until the April 1, 2002 City Council Meeting was approved at 11:08 p.m. by the following vote: Ayes: Mayor Bell and Council Members Best, Clement, Cole-McFadden and Stith. Noes: Mayor Pro Tempore Cheek. Excused Absence: Council Member Edwards.

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**SUBJECT: LAND USE PLAN AMENDMENTS - MANGUM TOWNSHIP PLAN  
- SOUTHEAST DURHAM PLAN**

To adopt a resolution to amend the future land use map of the Mangum Township Plan; and

To adopt a resolution to amend the future land use map of the Southeast Durham Plan.

Dwight Yarborough, of the City/County Planning Department, briefed Council on the land use plan amendments.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Council Member Stith seconded by Council Member Clement to adopt a resolution to amend the future land use map of the Mangum Township Plan; and

To adopt a resolution to amend the future land use map of the Southeast Durham Plan was approved at 11:10 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**Resolution #8847 - 8848**

**SUBJECT: WEST-NORTHWEST DURHAM PLAN**

To receive public comment regarding the West-Northwest Durham Plan; and

To adopt the West-Northwest Durham Plan.

Dwight Yarborough, of the City/County Planning Department, briefed Council on the plan.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Council Member Stith seconded by Mayor Pro Tempore Cheek to receive public comment regarding the West-Northwest Durham Plan; and

To adopt the West-Northwest Durham Plan was approved at 11:12 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best,

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Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: SMALL AREA PLAN AMENDMENT CASE: A01-12 -  
TICON/PARRISH - EASTERN QUADRANT OF THE  
INTERSECTION OF MLK PARKWAY**

Applicant: Ticon/Parrish

Location: Eastern quadrant of the intersection of MLK Parkway and Archdale Drive

Request: Change from Low Density Residential to Medium Density Residential

Planning Commission Recommendation and Vote: Denial - (7-0) July 25, 2001

Planning Department Recommendation: Approval

Dwight Yarborough, of the City/County Planning Department, briefed Council on the Southwest Durham Plan amendment. Also, he commented on the Planning Commission's recommendation of denial and staff's recommendation of approval.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.

Will Anderson, representing Ticon/Parrish, spoke in support of this plan amendment which accommodates the development of 60 townhomes. He noted proposal is consistent with two neighborhoods [Breckenridge and Dunbarton] across Archdale Drive, Southwest Durham and 20202 Comprehensive plans. He urged Council to approve amendment.

Mayor Bell declared the public hearing closed.

Council Member Cole-McFadden asked how will traffic be impacted by proposal.

Ron Horvath, representing the applicant, noted the infrastructure along MLK Parkway, Jr. is more than adequate to handle traffic and from traffic counts, the impact would be minimum.

Council Member Stith asked the developer what would be the environmental impact surrounding the pond.

Ron Horvath, representing the applicant, noted the pond would stay in place and would be protected during construction.

Council Member Stith asked the developer if there is a visibility issue at Archdale and MLK.

Will Anderson, representing the applicant, noted at the Zoning Committee meeting, staff knows about this visibility issue and will be moving the guardrail.

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Mayor Bell raised a concern about the Planning Commission's vote of denial.

Dwight Yarborough, of the City/County Planning Department, made comments about the meeting noting the residents from Dunbarton and Breckenridge communities expressed concern about the rental housing at that location.

Steve Boccino, representing the Zoning Committee of the Planning Commission, noted residents in the area expressed concern about residents coming out of Archdale trying to make a left onto Martin Luther King. He stated the Committee was not sure there was anything that staff suggested that would remedy the problem and noted traffic impact issues.

Council held discussion about the appearance, density, recommendation by staff and Planning Commission.

**MOTION** by Mayor Pro Tempore Cheek seconded by Council Member Clement to approve the Southwest Durham Plan amendment was approved at 11:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cheek and Council Members Best, Clement and Stith. Noes: Mayor Bell and Council Member Cole-McFadden. Excused Absence: Council Member Edwards.

**SUBJECT: REZONING CASE: P01-29 - WESTFIELD HOMES - 37.71 ACRES  
ON THE NORTH SIDE OF SCOTT KING ROAD**

Rezoning Case: P01-29

Applicant: Westfield Homes

Location: 37.71 acres on the north side of Scott King Road between Grandale and Herndon Road, PIN 0727-03-24-6295; 0727-03-24-9286; 0727-03-24-2286; 0727-03-24-6204; 0727-03-24-8888 (Tax Map 531A, Block 1, Lots 3, 4, 5, 6, 7)

Request: Rezoning from RD (Rural District) to PDR 2.39; (Planned Density Residential-2.39 units/acre) F/J-B

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of RD and placing same in and establishing same as PDR-2.39

Zoning Committee Recommendation and Vote: Denial – (7-0)  
(based on earlier version of Development Plan)

Planning Department Recommendation: Approval (based on current version of Development Plan)

Dick Hails, Assistant Planning Director, briefed Council on the staff report highlighting the density of the development has been dropped to 2.39 units per acre, there will be an

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addition of 75% wide undisturbed buffer area separating Scott King Road from the lots in the development. He commented on the surrounding development and noted water and sewer will be coming into this area, the existing site distance problems along Scott King Road in which a left turn lane would be required into one of the entrances and school capacity issues.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.

### **Proponents**

Larry Hall, representing applicant and owners, spoke in support of this rezoning. He made comments about the infrastructure [water & sewer], transportation impact is minimum on the Scott King Road area based on the 90 units proposed, speed limit reduction, proposed development complies with the existing adopted area plans—Thoroughfare, 2020, Triangle Township and 54/I-40 Corridor, consistent with neighborhoods; extensive vegetation -- 75 feet dedicated strip with additional 25 feet; and tree save area. Also, he made comments about information [maps, letters/petition of support for development] distributed to Council.

Bill Anderson, of 2705 Guess Road, spoke in support of this proposal noting the qualitative aspects are very important and noted he would like for Council and others to put more of a focus on the quality of development rather than density, etc. He noted this is a well-planned project and urged Council to support this rezoning.

### **Opponents**

Bob Jeffcoat, of 1103 Scott King Road, spoke in opposition to this rezoning addressing the non-compliance of the development to the NC54/I-40 plan. He made comments about the density and that the proposed development does not belong on the outer edge of the urban growth area, does not comply with the NC54/I-40 plan and is not one that Durham could be proud of.

Liz Pullman, of 1114 Scott King Road, spoke in opposition to this rezoning due to neighborhood compatibility, mass grading and school overcrowding concerns.

Bill Hunt, of 3821 Williamsburg Way, spoke in opposition to this proposal noting density is too high, schools are overflowing, would be a tax burden, not compatible with surrounding area, and the Zoning Commission denied it. Also, he commented on the proposed compromise with the builder. He stated the residents agreed to 75 homes, tree preservation areas remaining, no clear cutting and mass grading; and have not received a response from the builder.

### **Rebuttal**

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Larry Hall, representing applicant and owners, stated that Westfield Homes does not mass grade. He made comments about density, buffer, tree save, open space issues and urged Council to approve this development noting it sets a standard that has been unmatched by Fairfield and Lake Park regarding its rural character, impervious surface, greater tree buffering and saved area, and its greater open space.

Mayor Bell declared the public hearing closed.

Council Member Stith asked the developer what type of buffering/precaution has been taken to address the slope area and stream.

Chuck \_\_\_\_\_, representing the applicant, noted the configuration of Lot 12 is twice as wide allowing construction of up to a 3,000 square foot house without disturbing the steep slope area. Also, he made comments about the buffering along the stream.

Council Member Stith asked staff to comment on the changes between two plans and the major points that led to staff's recommendation that is not in compliance.

Dick Hails, Assistant Planning Director, commented on the original proposal highlighting staff's concerns relative to density, open space, buffering, streams and lot size. The major changes that occurred in the plan were having several one acre lots, 75 feet undisturbed buffer separating the lots from Scott King Road was significant in terms of relationship to the plan and dropped density.

Mayor Pro Tempore Cheek asked the developer about the effort to reduce the proposal to 75 lots instead of 90.

Larry Hall, representing the applicant and owners, noted the developer has reduced the density substantially; provided open space, tree coverage and stream buffer that's well in access of what's required.

Mayor Bell spoke in opposition to this rezoning expressing concern about the density and setting a precedence along the urban growth boundary. The Mayor asked the developer if he would be willing to combine some of the lot sizes.

Larry Hall, representing the applicant and owners, noted the proposed development is at the dimension and density it should be in order to be a successful project.

Discussion was held on the issue lot size.

Mayor Bell asked the developer if he could revisit the issue of having larger lot sizes thereby reducing the number of homes.

A representative of the developer noted they have looked at this issue three times.

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Larry Hall, representing the applicant, made comments about the original plan consisting of 172 lots and now down to 90 lots and that is the lowest they could go with this project.

Mayor Pro Tempore Cheek asked the developer if they would be willing to take another look at this issue.

Larry Hall, representing the applicant, noted the developer has expended almost two years on this process and has come forward with the best project tonight.

**MOTION** Council Member Clement seconded by Council Member Best to adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of RD and placing same in and establishing same as PDR-2.39 was approved at 12:32 a.m. by the following vote: Ayes: Mayor Pro Tempore Cheek and Council Members Best, Clement and Stith. Noes: Mayor Bell and Council Member Cole-McFadden. Excused Absence: Council Member Edwards.

**SUBJECT: REZONING CASE: P01-66 - TARHEEL STEAKS, INC., DBA WILLIAMS CONSTRUCTION COMPANY - 6.17 ACRES ON THE NORTH SIDE OF HORTON ROAD**

Rezoning Case: P01-66

Applicant: Tarheel Steaks, Inc., DBA Williams Construction Company

Location: 6.17 acres on the north side of Horton Road between Duke Street and Stadium Drive, PIN 0823-07-68-3654 (partial) Tax Map 314, Block 1, Lot 2 (partial)

Request: Rezoning from R-10 (Residential 10 District) to RM-8 (D) (Multifamily Residential District with Development Plan); E-B (Eno Basin Watershed Overlay)

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of R-10- and placing same in and establishing same as RM-8 (D).

Zoning Committee Recommendation and Vote: Denial – (4-3)

Planning Department Recommendation: Approval

Dick Hails, Assistant Planning Director, briefed Council on the staff report. He made comments about the Zoning Committee's recommendation citing traffic and school overcrowding concerns, noted proposal is consistent with adopted plan and staff's recommendation of approval.

Council Member Stith disclosed that he owns property near the site but has no financial interest in this matter.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard.



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Rick Williams, representing the applicant, spoke in support of this rezoning urging Council to approve this rezoning.

Mayor Bell declared the public hearing closed.

**MOTION** by Council Member Stith seconded by Council Member Best to adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of R-10- and placing same in and establishing same as RM-8 (D) was approved at 12:36 a.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: REZONING CASE: P01-80 - CITY OF DURHAM - 4.568 ACRES  
AT THE INTERSECTION OF LYCKAN PARKWAY AND  
UNIVERSITY DRIVE**

Rezoning Case: P01-80

Applicant: City of Durham

Location: 4.568 acres at the intersection of Lyckan Parkway and University Drive, PIN 0810-01-15-2412 (Tax Map 434, Block 2, Lot 1D)

Request: Rezoning from RM-12, RM-20 (Multifamily Residential Districts) and R-20 (Residential 20 District) to OI-2 (General Office and Institutional District)

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of RM-12, RM-20 and R-20 and placing same in and establishing same as OI-2.

Zoning Committee Recommendation and Vote: Approval – (7-0)

Planning Department Recommendation: Approval

Dick Hails, Assistant Planning Director, briefed Council on the staff report. He noted there is not a development plan attached to this rezoning because there is no current proposed use on the site.

Laura Gill, Interim Property & Facilities Manager Director, informed Council that this property has been declared surplus property in September 2001.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Council Member Clement seconded by Council Member Best to adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the above described property out of RM-12, RM-20 and R-20 and

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placing same in and establishing same as OI-2 was approved at 12:37 a.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

**SUBJECT: CASE: P01-82 - INITIAL ZONING OF NEWLY ANNEXED TERRITORY M. W. THARRINGTON, JR. - CITY OF DURHAM - EAST OF ELLIS ROAD**

Case: P01-82 - Initial Zoning of Newly Annexed Territory (M. W. Tharrington, Jr.)

Initiated by: City of Durham

Location: East of Ellis Road, west of NC 147, PIN 0830-04-90-3187

Request: R-20 (Residential 20 District) No change in the existing zoning classification is proposed, existing zoning is R-20.

To adopt an ordinance amending the Zoning Ordinance the same being Chapter 24 of the Durham City Code, to establish R-20 zoning for the above described newly annexed territory.

Zoning Committee Recommendation and Vote: Approval- (5-2)

Planning Department Recommendation: Approval

Dick Hails, Assistant Planning Director, briefed Council on the staff report.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no objections and/or allegations, the public hearing was declared closed.

**MOTION** by Council Member Clement seconded by Council Member Stith to adopt an ordinance amending the Zoning Ordinance the same being Chapter 24 of the Durham City Code, to establish R-20 zoning for the above described newly annexed territory was approved at 12:38 a.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden and Stith. Noes: None. Excused Absence: Council Member Edwards.

There being no further business to come before the City Council, the meeting was adjourned at 12:39 a.m.

Linda E. Bratcher  
Deputy City Clerk

D. Ann Gray, CMC  
City Clerk

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